

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

DOUGLAS L. TOOLEY,

Petitioner,

v.

GOVERNOR CHRISTINE GREGOIRE AND
CITY OF SEATTLE,

Respondents.

CASE NO. 11-3-0006

(Tooley)

**ORDER DENYING
RECONSIDERATION**

This matter comes before the Board on Petitioner's motion for reconsideration of the Board's Order of Dismissal issued April 1, 2011.¹ Governor Gregoire and the City of Seattle each filed an answer in opposition to reconsideration.²

WAC 242-02-832(2) provides:

A motion for reconsideration shall be based on at least one of the following grounds:

- (a) *Errors of procedure* or misinterpretation of fact or law, material to the party seeking reconsideration;
- (b) *Irregularity in the hearing before the board by which such party was prevented from having a fair hearing*; or
- (c) Clerical mistakes in the final decision and order.

Petitioner's motion asserts an *error of procedure* and *irregularity in the hearing whereby he was prevented from having a fair hearing*. In an accompanying declaration, Petitioner

¹ Petitioners' Motion for Reconsideration, April 29, 2011.

² City's Answer to Motion for Reconsideration, May 3, 2011; Governor Christine Gregoire's Answer to Motion for Reconsideration, May 5, 2011.

1 states he didn't receive timely notice of the prehearing conference due to "a mail forwarding
2 system that is not designed to handle itinerant individuals."³ Attached to Petitioner's
3 declaration is a photocopy of the notice envelope with 3 separate forwarding labels. Further,
4 Petitioner asserts the Board "failed to respond to the 'Request for Reasonable
5 Accommodation' submitted pursuant to General Rule 33" to accommodate his disability.
6

7 Answering the motion, the City and Governor each assert the motion for reconsideration is
8 untimely, as it was filed on April 29, more than 10 days after the April 1 Order of Dismissal.⁴
9

10 The Respondents further contend reconsideration of notice of the prehearing conference
11 would be futile, because the Board has already determined it has no jurisdiction in the
12 matter.⁵ According to the City, reconsideration of the Order of Dismissal is not required
13 because the dismissal was not based on Petitioner's non-appearance at the prehearing
14 conference and therefore is not related to the mis-delivery of the Notice of Hearing.
15

16 Upon consideration, the Board finds no error of procedure or irregularity in the prehearing
17 conference requiring reconsideration. As to the Notice of Hearing, it was properly placed in
18 the mail addressed to the mailing address provided by Petitioner.⁶ No request for special
19 accommodation was filed by Petitioner with the Board.⁷
20

21 As to the Order of Dismissal, again there was no error of procedure or irregularity preventing
22 fairness. The Order was issued by the Board *sua sponte* upon determination the matter was
23 not ripe for review. The Board did not invite or hear argument from any party. The Board
24 had before it the Petition for Review (PFR), the Answer of Governor Christine Gregoire, and
25

26
27 ³ Petitioner's Declaration, continuing "Given the American Wall Street municipal bond finance under the
28 influence of the Growth Management Hearings Board in general and [the Alaska Way Viaduct replacement]
29 project specifically probable cause for investigation of further investigation of possible Federal malfeasance in
this matter exists..."

30 ⁴ WAC 242-02-832(1) provides a motion for reconsideration must be filed within 10 days of a final decision of
the Board.

31 ⁵ City Answer to Motion, at 6; Governor's Answer to Motion, at 2.

32 ⁶ The same address appears on Petitioner's Motion for Reconsideration and Declaration.

⁷ The Petitioner may have filed a General Rule 33 request with the courts, but GR 33 does not apply to the
GMHB, and the Board has no way of knowing about such requests to the courts. The Board's Notice of
Hearing includes a form for requests for special accommodations.

1 the Preliminary Index of City of Seattle. Based on these documents the Board on its own
2 motion dismissed the PFR as prematurely filed.⁸ Dismissal was not based on Petitioner's
3 failure to appear at the Prehearing Conference. Rather, it was based on lack of jurisdiction.⁹
4 The Petition for Review challenges an incomplete SEPA action, as the final SEIS has not
5 been issued or published; thus the Board has no jurisdiction to hear the petition.
6

7 The Board concludes there were "no errors of procedure" or "irregularities preventing a fair
8 hearing." The motion for reconsideration is **denied**.
9

10 ORDER

11 The Board ORDERS:
12

13 Petitioner's Motion for Reconsideration is **denied**.
14

15 DATED this 9th day of May, 2011.
16

17
18 _____
Margaret A. Pageler, Board Member

19
20 _____
David O. Earling, Board Member

21
22 _____
William Roehl, Board Member
23

24
25
26 Note: This order constitutes a final order as specified by RCW 36.70A.300 and WAC 242-
27 02-832.

28 No Reconsideration. Pursuant to WAC 242-02-832 (3), a board order on motion for
29 reconsideration is not subject to a motion for reconsideration.
30
31 _____
32

⁸ Order of Dismissal, at 2.

⁹ Order of Dismissal at 2

1 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision
2 to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be
3 instituted by filing a petition in superior court according to the procedures specified in chapter
4 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of
5 this Order shall be filed with the appropriate court and served on the Board, the Office of the
6 Attorney General, and all parties within thirty days after service of the final order, as provided in
7 RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service
8 on the Board means actual receipt of the document at the Board office within thirty days after
9 service of the final order. A petition for judicial review may not be served on the Board by fax
or by electronic mail.
Service. This Order was served on you the day it was deposited in the United States mail.
RCW 34.05.010(19)